

ADVISORY OPINION NO. 89-134

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON JANUARY 4, 1990

GOVERNMENTAL BODY SEEKING OPINION

A State Public Official

OPINION SOUGHT

1. Whether it is a violation of the Ethics Act for a public official following his resignation to immediately represent an individual or company as a lobbyist before the legislature or any State agency? If so, should an exemption be granted allowing the public official to appear before his former State agency within a six month period after termination of his public service?

2. Whether it is a violation of the Ethics Act for a public official to seek employment with a regulated entity while serving a State agency? If so, should an exemption be granted for the public official to seek employment with a regulated entity while serving the State agency?

OTHER FACTS RELIED UPON BY THE COMMISSION

The public official will resign from his state position within the next month. He would like to act as a lobbyist for individuals or companies before the legislature or State agencies. However, given the short legislative session it is necessary that the public official be available immediately upon his resignation to act as a lobbyist.

Another option available to the public official after resigning is to accept a position with a company which is regulated by the State agency with which he formerly served. Prior to his accepting the position with state government the requestor was employed by a company which was regulated by his former state agency. He expects to actively participate in this specific area of industry again.

The public official has applied for an exemption if the Commission determines that there is a violation of the Act. His financial situation dictates that he begin work immediately upon his resignation with the State governmental agency and his expertise is confined to this specific area.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

Representative Capacity

West Virginia Code 6B-2-5(g)(1) states in pertinent part that... no appointed public official...shall, during his or her public service...or for a period of six months after the termination of his or her public service...with a governmental entity authorized to hear contested cases or promulgate regulations appear, in a representative capacity before the governmental entity in which he or she serves or served in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

West Virginia Code 6B-2-5(g)(2) states in pertinent part that..."represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person...

West Virginia Code 6B-2-5(g)(3) states in pertinent part that...a present or former public official...may appear at any time in a representative capacity before the Legislature...in relation to the consideration of a statute, budget...rule, resolution or enactment.

Employment

West Virginia Code 6B-2-5(h)(1) states in pertinent part that...no full-time public official...who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

West Virginia Code 6B-2-5(h)(2) states in pertinent part that...no person regulated by a governmental agency shall offer employment to a full-time public official...of the regulating governmental agency during the period of time the public official...works or serves in such agency.

West Virginia Code 6B-2-5(h)(3) states in pertinent part that...a full-time public official...who would be adversely affected by the

provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency.

ADVISORY OPINION

1. An analysis of the facts presented and the pertinent statutory provisions of subsection (g) follows:

The Act prohibits a former public official from appearing in a representative capacity before his former state agency in certain matters set forth in subsection (g)(1) within a six month period after terminating his public service unless an exemption has been granted. However, the public official has requested an exemption and the Commission hereby grants such exemption to allow the public official to appear in a representative capacity before his state agency within a six month period

Additionally, the Act specifically states that any present or former public official may appear at any time in a representative capacity before the Legislature in consideration of a statute, budget, ordinance, rule, regulation or enactment. "Represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

Therefore, pursuant to subsection (g)(3) it would not be a violation for the public official to resign his position with the State agency and appear in a representative capacity for an individual or company as a lobbyist before the Legislature.

2. An analysis of the facts presented and the pertinent statutory provisions of subsection (h) follows:

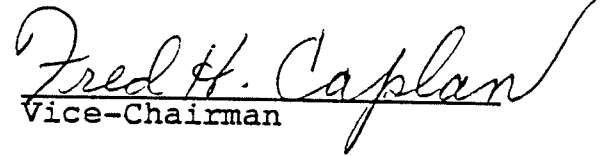
Subsection (h)(1) of the Act prohibits a full-time public official who exercises policymaking, nonministerial or regulatory authority from seeking employment with any person who is or may be regulated by the governmental agency which he is serves while employed with that agency.

Subsection (h)(2) of the Act prohibits a company from offering employment to a public official while he is serving a governmental agency which regulates that company.

Therefore, it would be a violation of subsections (h)(1) and (2) of the Act for a public official to seek or accept employment with a company which is regulated by the governmental agency which he serves.

However, subsection (h)(3) allows a person who may be adversely affected by this subsection to seek an exemption, when a person's education and experience is such that it would deprive the person of the ability to earn a livelihood in the State outside of the governmental agency. The requestor has sought such exemption.

The Commission finds that the requestor has shown that the enforcement of the provisions of this subsection would result in his inability to earn a livelihood outside the State agency with which he currently serves and thus deprive him of earning a living within the State. The request for exemption is hereby granted.


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